

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

LAUREL BREWSTER
Plaintiff

v.

HILLSTONE RESTAURANT GROUP,
INC., Individually and d/b/a HOUSTON'S
AND HOUSTON'S
RESTAURANT
Defendant

§
§
§
§
§
§
§
§
§
§

NO. _____

AFFIDAVIT OF LINDA L. SETZER

BEFORE ME, the undersigned authority, personally appeared LINDA L. SETZER, who being duly sworn upon her oath, deposed and swore as follows:

1. "My name is Linda L. Setzer. I am of sound mind, over the age of eighteen, legally competent and capable of making this affidavit. All of the information contained in this affidavit is true and correct and based upon my personal knowledge.
2. I am employed by Gallagher Bassett Services, Inc. as a Senior Claims Representative. Gallagher Bassett Services, Inc. is the third party administrator handling the general liability insurance program for Defendant Houston's Restaurant, and I have been employed by Gallagher Bassett Services, Inc. for three years.
3. As a Senior Claims Representative, I am the adjuster assigned to handle Laurel Brewster's claim against Houston's Restaurant for the incident occurring January 15, 2007 at the Houston's restaurant located at 5318 Belt Line Rd., Addison, Texas. As the adjuster assigned to handle that particular claim, I am personally involved in, and familiar with, all aspects of Ms. Brewster's claim against Houston's Restaurant, including all communications between Gallagher Bassett Services, Inc. and Ms. Brewster and her representatives. In such capacity, I have personal knowledge of the facts stated herein, and such facts are both true and correct.
4. On November 20, 2008, I personally spoke with Ms. Brewster's attorney,

AFFIDAVIT OF LINDA L. SETZER

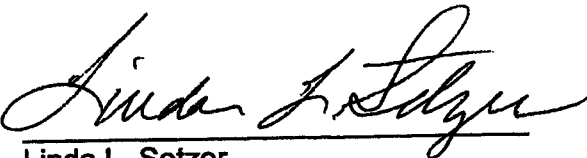
K:\Brewster v. Hillstone\Affidavits\Linda Setzer - Removal.wpd

PAGE 1

Sidney P. Cominsky, who presented a settlement demand on behalf of Ms. Brewster to Gallagher Bassett Services, Inc., seeking to resolve Ms. Brewster's claims against Houston's for an amount exceeding the jurisdictional limit of \$75,000.00.

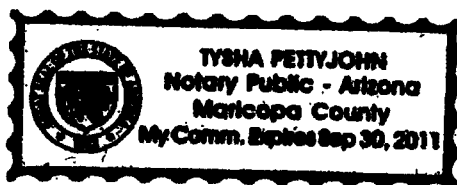
5. Gallagher Bassett Services, Inc. obtained a medical authorization form from Plaintiff Brewster allowing Gallagher Bassett Services, Inc. to obtain Ms. Brewster's medical records and billing records for treatment allegedly resulting from the January 15, 2007 incident in question. Gallagher Bassett Services, Inc. then utilized Ms. Brewster's medical authorization form to obtain Ms. Brewster's medical records and billing records for treatment allegedly resulting from the January 15, 2007 incident in question, and I have personally reviewed those medical records and billing records. Ms. Brewster's billing records indicate total amounts in excess of \$17,000.00 for treatment allegedly related to the January 15, 2007 incident in question.

Further, Affiant sayeth naught."

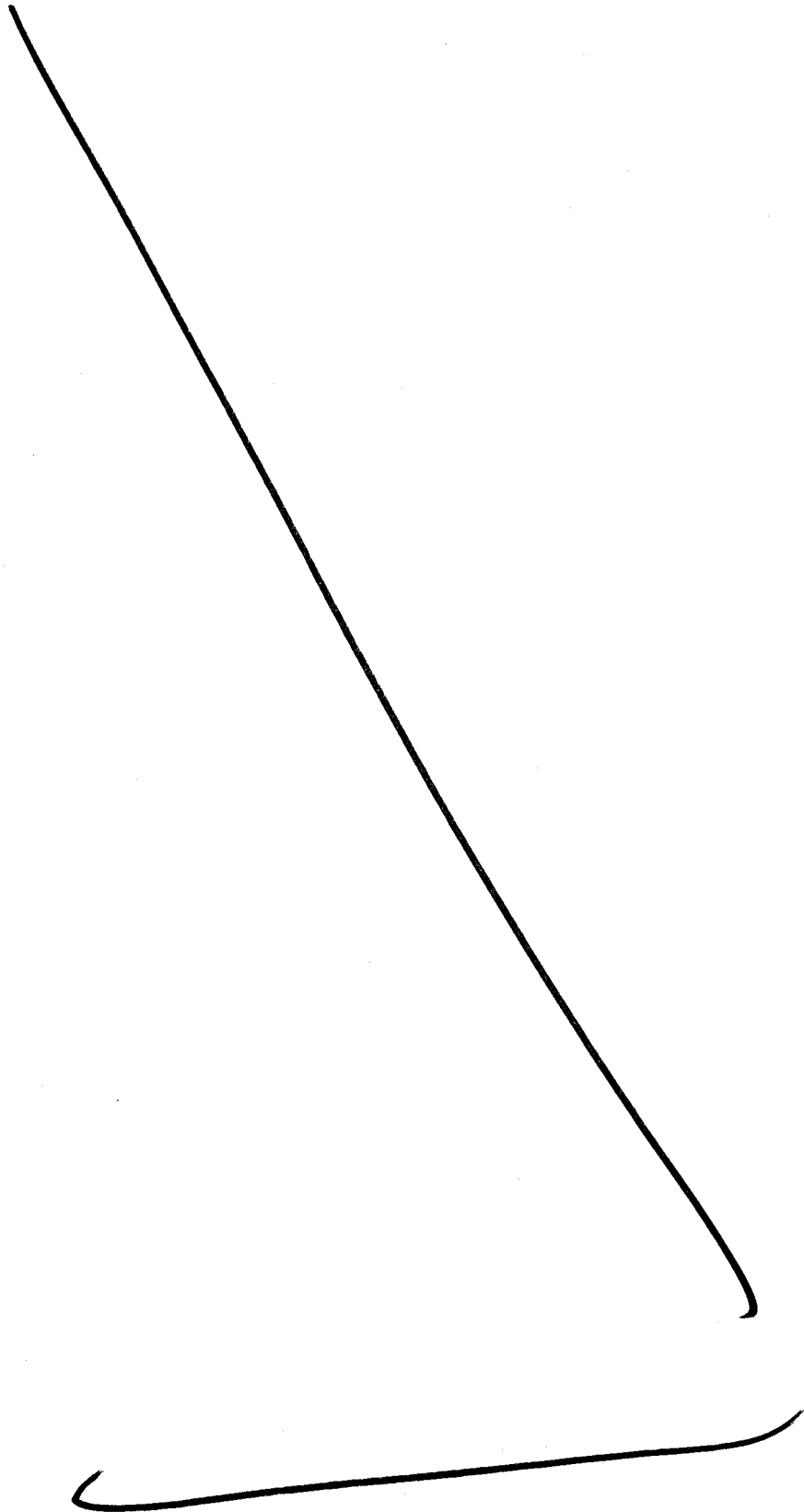

Linda L. Setzer

SUBSCRIBED AND SWORN TO BEFORE ME, on the 29th day of January, 2009, to certify which witness my hand and official seal.


NOTARY PUBLIC



D



UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

LAUREL BREWSTER

Plaintiff

v.

HILLSTONE RESTAURANT GROUP,
INC., Individually and d/b/a HOUSTON'S
AND HOUSTON'S
RESTAURANT

Defendant

§
§
§
§
§
§
§
§
§
§

NO. _____

AFFIDAVIT OF JOSEPH A. BARBKNECHT

BEFORE ME, the undersigned notary public, personally appeared JOSEPH A. BARBKNECHT, who being by me duly sworn upon his oath, deposed and swore as follows:

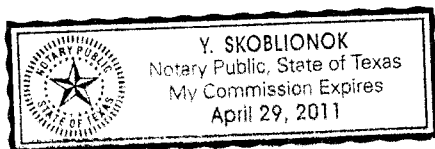
1. "My name is Joseph A. Barbknecht. I am of sound mind, over the age of eighteen and capable of making this affidavit. All of the information contained in this affidavit is true and correct and based upon my personal knowledge.
2. I am licensed by the Supreme Court of Texas to practice law in this state. I have engaged in the practice of law for over 24 years in both federal and state courts throughout the State of Texas. I am the attorney of record for Hillstone Restaurant Group, Inc., Individually and d/b/a Houston's and Houston's Restaurant in the above-entitled and numbered cause, and make this affidavit in my capacity as counsel for Defendant Hillstone Restaurant Group, Inc., Individually and d/b/a Houston's and Houston's Restaurant. As attorney of record, I am familiar with all aspects of Ms. Brewster's claims and lawsuit against Houston's Restaurant, including all communications between Gallagher Bassett Services, Inc. and Ms. Brewster, between Gallagher Bassett Services, Inc. and Ms. Brewster's legal representatives, and between my office and Ms. Brewster's legal representatives. In such capacity, I have personal knowledge of the facts stated herein, and such facts are both true and correct.
3. In my 24 years of practicing law in this State, I have practiced in federal and state court throughout the State of Texas, including the United States District Courts for the Northern District of Texas, Dallas Division. Throughout that time, I have answered and defended hundreds of lawsuits involving personal injury claims against my clients. My representation in defending clients against those personal injury lawsuits included evaluating the cases to make good faith estimates as to the potential value of the plaintiff's claims.

4. I have personally reviewed all information and records provided to our office by Linda Setzer related to the medical treatment Ms. Brewster received for the injuries she allegedly suffered while on the premises of Houston's Restaurant located at 5318 Belt Line Rd., Addison, Texas. I have further reviewed Defendant's Petition for Removal and all exhibits attached thereto, including the affidavit of Linda Setzer.
5. Plaintiff's Original Petition alleges four distinct categories of damages, seeking past and future damages for each category. Plaintiff's medical billing records indicate total amounts in excess of \$17,000.00 for treatment allegedly related to the January 15, 2007 incident in question. Moreover, half of the categories of damages sought by Plaintiff are unliquidated damages such as pain and suffering and mental anguish. Such categories of damages are difficult to quantify, and are the type for which a jury has discretion to freely award damages as it sees fit according to the evidence presented.
6. Based upon my practice and experience both in state and federal courts throughout the State of Texas, including in and around Dallas County, Texas, and considering the information I have reviewed related to Ms. Brewster's claims and lawsuit against Houston's Restaurant, and the nature and extent of Plaintiff Brewster's alleged injuries, including the information set forth specifically in Linda Setzer's affidavit attached to Defendant's Petition for Removal as Exhibit C, it is my good faith belief that the amount in controversy exceeds \$75,000.00 at the time of the requested removal.

Further, Affiant sayeth naught."


Joseph A. Barbknecht

SUBSCRIBED AND SWORN TO BEFORE ME, on the 29th day of January, 2009,
to certify which witness my hand and official seal.




NOTARY PUBLIC

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Laurel Brewster

DEFENDANTS

Hillstone Restaurant Group, Inc., Individually and d/b/a
Houston's and Houston's Restaurant(b) County of Residence of First Listed Plaintiff Dallas County, Texas
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)

See attachment

Attorneys (If Known)
See attachment

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ PTF 1 ☐ DEF 1
- Citizen of Another State ☐ PTF 2 ☐ DEF 2
- Citizen or Subject of a Foreign Country ☐ PTF 3 ☐ DEF 3
- Incorporated or Principal Place of Business In This State ☐ PTF 4 ☐ DEF 4
- Incorporated and Principal Place of Business In Another State ☐ PTF 5 ☒ DEF 5
- Foreign Nation ☐ PTF 6 ☐ DEF 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332

Brief description of cause:

Personal injuries sustained while customer on Defendant's property.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23DEMAND \$ AMOUNT
> \$75,000CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 29 JAN. 09

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CIVIL COVER SHEET
ATTACHMENT

1.(c) PLAINTIFFS ATTORNEY'S (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)

John J. Diggins
John J. Diggins, P.C.
7920 Belt Line Road, Suite 760
Dallas, Texas 75254
(972) 392-3942
(972) 934-1777 FAX
Email: jdiggins@digginslaw.com

DEFENDANT'S ATTORNEYS

Joseph A. Barbknecht
Chris R. Norris
THE BARBKNECHT FIRM, P.C.
500 N. Central Expressway, Suite 325
Plano, Texas 75074
(972) 312-1510
(972) 312-1511 FAX
Email: jbarbknecht@narnknecht.com
Email: cnorris@barbknecht.com

**United States District Court
Northern District of Texas**

RECEIVED

JAN 30 2009

**Supplemental Civil Cover Sheet For Cases Removed
From State Court**

CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S. District Clerk's Office. Additional sheets may be used as necessary.

1. State Court Information:

3 - 09 CV 0198 - P

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

Court

Case Number

193rd District Court
Dallas County, Texas

DC-08-15789-L

2. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code.)

Party and Type

Attorney(s)

Plaintiff Laurel Brewster

John J. Diggins
SBN 05859600
John J. Diggins, P.C.
7920 Belt Line Road, Suite 760
Dallas, Texas 75254
(972) 392-3942
(972) 934-1777 FAX

Defendant Hillstone Restaurant
Group, Inc., Individually and d/b/a
Houston's and Houston's
Restaurant

Joseph A. Barbknecht
SBN 01718400
Chris R. Norris
SBN 24032913
THE BARBKNECHT FIRM, PC
500 N. Central Expwy, Ste 325
Plano, Texas 75074
(972) 312-1510
(972) 312-1511

3. Jury Demand

Jury Demand was made by Plaintiff Laurel Brewster as part of her Original Petition filed on or about December 17, 2008.

4. Answer:

No Answer was made in State Court.

5. Unserved Parties:

There are no parties who have not been served at the time this case was removed.

6. Nonsuited, Dismissed or Terminated Parties:

There are no such parties, nor are there any changes from the style on the State Court papers.

7. Claims of the Parties:

Plaintiff Laurel Brewster alleges that she entered upon the premises of Defendant located at 5318 Belt Line Rd., Addison, Texas for the purpose of dining with her friend, and that while on Defendant's premises she was seriously injured as a result of a dangerous condition then existing on Defendant's premises, namely standing ice not visible to patrons. Plaintiff alleges that Defendant knew, or should have known, of said dangerous condition, which proximately caused her fall and subsequent bodily injuries. Plaintiff has asserted a cause of action under premises liability, and is seeking damages for past and future medical expenses, past and future mental anguish, past and future physical pain and suffering, and past and future loss of earnings and/or loss of earning capacity.

Defendant Hillstone Restaurant Group, Inc. d/b/a Houston's Restaurant generally denies each and every, all and singularly, the allegations set forth in Plaintiff's Original Petition and any other pleading which may be filed, and demands strict proof thereof upon the trial of this case before a jury. Defendant further asserts, amongst other defenses, that Plaintiff is contributorily negligent, and through her own actions proximately caused the damages/injuries for which she seeks recovery from this Defendant. Additionally, Defendant asserts that the standing ice of which Plaintiff complains does not constitute a dangerous condition under Texas law as said ice was the result of natural accumulations and not the result of any act/omission on the part of Defendant.